

REC'D APR 23 1990

220847

city

EASEMENT FOR POTATO EFFLUENT TRANSMISSION LINE

This agreement is made this 2nd day of February, 1990, between the CITY OF OTHELLO, a municipal corporation, (herein the "Grantor") and the CARNATION COMPANY, a Delaware corporation, (herein the "Grantee").

For valuable consideration, receipt whereof is hereby acknowledged, Grantor hereby Grants to Grantee, a non-exclusive easement across, along, in, upon and under that portion of Grantor's property being a strip ten (10) feet in width lying within the Grantor's street right-of-way along north Broadway Avenue and Lee Road as outlined in red in the map attached hereto as Exhibit "A", and by this reference made a part hereof (herein the "Easement Area") for the purpose of installing, constructing, operating, maintaining, removing, repairing, replacing and using a buried PVC pipeline (herein the "Transmission Line") for the purpose of transporting potato processing effluent generated from Grantee's Othello, Washington plant to be carried to Grantee's storage and land application site located east of Bruce, Washington, together with the non-exclusive right of ingress to and egress from the Easement Area for the foregoing purposes.

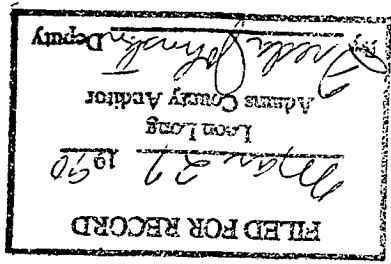
Subject to all existing easements, covenants, restrictions and reservations of record or in apparent use.

Grantor hereby reserves unto itself, the right to utilize the Easement Area for any purposes it deems necessary including, but not necessarily limited to operating and maintaining its roads and road right-of-way.

This easement is further granted subject to and conditioned upon the following terms, conditions and covenants which Grantee hereby promises to faithfully and fully observe and perform.

1. SPECIFICATIONS:

Grantee shall construct the Transmission Line in accordance with the specifications for the project as prepared by the J-U-B Engineers, Inc. and in accordance with such additional and other specific and reasonable requirements, conditions and specifications applicable to Grantor's property as may be communicated to Grantee by Grantor's engineer or public works department for the purpose of protecting Grantor's facilities thereon and to avoid hazardous conditions. The Transmission Line shall not exceed sixteen (16") inches in diameter and shall be buried to a depth of at least four and one-half (4.5) feet.



2. APPROVAL OF PLANS: Prior to any construction, alteration, replacement or removal of the Transmission Line or any other substantial activity by Grantee in the Easement Area, a notification and plans for the same shall be submitted in writing to Grantor by Grantee and no such work by Grantee shall be commenced without Grantor's prior written approval of the plans thereof, which approval shall not be unreasonably withheld; PROVIDED, HOWEVER, that in the event of an emergency requiring immediate action by Grantee for the protection of its facilities or other persons or property, Grantee may take such action upon such notice to Grantor as is reasonable under the circumstances. Any changes or revisions in the plans approved by Grantor shall also be subject to Grantor's prior approval. Nothing in this agreement shall be deemed to impose any duty or obligation on Grantor to determine the adequacy or sufficiency of Grantee's plans and designs, or to ascertain whether Grantee's construction is in conformance with the plans and specifications approved by Grantor.

3. COORDINATION OF ACTIVITIES: Grantee shall coordinate the dates of its construction and other major activities in the Easement Area with the Public Works Director and the City Administrator, or such other employee of Grantor as Grantor may from time to time designate, and Grantee shall provide said employees with at least five days prior written notice of its intent to enter upon the Easement Area to commence such activities; PROVIDED, HOWEVER that in the event of an emergency requiring immediate action by Grantee for the protection of its facilities or other persons or property, Grantee may take such action upon such notice of Grantor as is reasonable under the circumstances.

4. WORK STANDARDS: All work to be performed by Grantee in the Easement Area shall be in accordance with the plans submitted to and approved by Grantor and shall be completed in a careful and workmanlike manner to Grantor's satisfaction, free of claims or liens. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance or future alternation of said easement shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor and all parties affected thereby. Wherever any such fill or embankment shall or may obstruct the natural or preexisting drainage from such land and premises of the Grantor, or any other party, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and preexisting drainage. Upon completion of construction of the Transmission Line on the Easement Area and upon completion of any subsequent work performed by Grantee on the Easement Area, Grantee

shall remove all debris and restore the surface of the Easement Area as nearly as possible to the condition in which it was at the commencement of such work, and shall replace any property corner monuments, survey references or hubs which were disturbed or destroyed during construction.

5. COST OF CONSTRUCTION AND MAINTENANCE: Grantee shall bear and promptly pay all costs and expenses of construction and maintenance of the Transmission Line and shall hold Grantor harmless from any payment thereon. Grantee shall bear the costs of removal, relocation or reconstruction of any or all right of way fences, telephone or telegraph poles or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of the Easement Area for the purposes set forth herein.

6. GRANTEE'S USE AND ACTIVITIES: Grantee shall exercise its rights under this agreement so as to minimize, and avoid if reasonably possible, interference with Grantor's use of the Easement Area or any of Grantor's premises and Grantee shall at all times conduct its activities in the Easement Area and maintain the Transmission Line, so as not to cause leakage therefrom, or to interfere with, obstruct, cause damage to or endanger Grantor's operations, facilities or properties, or any operations, facilities or property of any third parties who may have an interest in the Easement Area or in the adjoining lands thereto.

7. RISK OF LOSS: The Grantor shall not be liable for any injury (including death) to any person or persons, or for damage to any property including property of Grantee sustained or alleged to have been sustained as a result of any condition (including existence of future defects) in the Easement Area or occurrence whatsoever related to the Easement Area or related in any way by Grantee's use and occupancy of the Easement Area.

8. INDEMNIFICATION: Grantee shall and hereby covenants and agrees to indemnify and hold the Grantor, its contractors, employees, agents, officers, and elected officials harmless from any loss, damage, liability or expenses (including attorneys fees and other costs incurred in connection with litigation or the defence of claims, whether claims involve litigation) resulting from any actual or alleged injury to any person, (including death) or from any actual or alleged loss of or damage to any property as a result of any condition (including existence of future defects) in the Easement Area or occurrence whatsoever relating to the Easement Area or related in any way to the use and occupancy of the Easement Area caused by the negligence of Grantee, or Grantee's agents, employees, independent contractors, licensees or invitees.

9. INTERFERENCE WITH GRANTOR'S FUTURE FACILITIES: In the event Grantor desires to construct facilities relating to Grantor's operations on or in the vicinity of the Easement Area, and the location or existence of the Transmission Line substantially interferes with such proposed facilities or construction thereof, or makes such construction or facilities substantially more expensive, Grantee shall have the obligation to either, in Grantee's sole discretion, (a) relocate, protect or modify the transmission lines so as to eliminate such interference or expenses, or (b) reimburse Grantor for its added costs of design, construction, installation and/or acquisition of other property, provided that the location and existence of the Transmission Line is the sole cause of such interference or expense; PROVIDED, HOWEVER, this condition shall not be applicable if all other causes contributing to such interference or expense existed prior to the installation of the Transmission Line.

10. NON-WARRANTY: The Grantor does not warrant its title to the Easement Area nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof.

11. TERMINATION FOR BREACH: In the event Grantee breaches or fails to perform or observe any of the terms and conditions herein, and fails to cure such breach or default within ninety (90) days of Grantor's giving Grantee written notice thereof, or, if not reasonably capable of being cured in such ninety (90) days, within such other period of time as may be reasonable in the circumstances, Grantor may terminate Grantee's rights under this agreement in addition to and not in limitation to any other remedy of Grantor at law or in equity, and the failure of Grantor to exercise such right at any time shall not waive Grantor's right to terminate for any future breach of default.

12. TERMINATION FOR CESSATION OF USE-REVERSION: In the event that the Grantee ceases to use the Transmission Line for a period of eighteen (18) successive months, this agreement and all of Grantee's rights hereunder shall terminate and revert to Grantor.

13. RELEASE OF OBLIGATIONS ON TERMINATION: No termination of this agreement shall release Grantee from any liability or obligation with respect to any matter occurring prior to such termination nor shall such termination release Grantee from its obligation of liability to remove the Transmission Line from the Grantor's property and restore the premises.

14. REMOVAL OF TRANSMISSION LINE ON TERMINATION: Upon any termination of this agreement, Grantee shall promptly remove from the Easement Area the Transmission Line and restore the ground to the condition now existing, or in the alternative, take such other mutually agreeable measures to minimize the impact of the Transmission Line on the Easement Area. Such work, removal and restoration shall be done at the sole cost and expense of Grantee and in a manner satisfactory to Grantor. In case of failure of Grantee to remove the Transmission Line, restore the property, or take such mutually agreed upon measures, Grantor may, after reasonable notice to Grantee, remove the Transmission Line, restore the ground or take such measures at the expense of Grantee and Grantor shall not be liable therefore.

15. NOTICES: Any notice, declaration, demand or communication to be given by any party to this Easement to any other party shall be in writing and transmitted to the other party by either personally delivering the notice or by certified or registered mail, return receipt requested, addressed as follows:

TO GRANTOR: City of Othello  
512 E. Main  
Othello, WA 99344

TO GRANTEE: Carnation Company  
2089 West Broadway  
Moses Lake, WA 98837

Any party may change his address by giving written notice to the other parties in the manner provided above. The mailing and registering or certifying of any such notices herein provided shall be sufficient service thereof. Service shall be complete when such notice is registered or certified and placed in the United States mail as shown by the cancellation stamp or postage meter stamp, as the case may be.

16. ASSIGNMENT: Grantee shall not assign its rights hereunder without the prior written consent of Grantor, which consent will not be unreasonably withheld. No assignment of the privileges and benefits accruing to Grantee herein and no assignment of the obligations or liabilities of Grantee herein, whether by operation of law or otherwise shall be valid without the prior written consent of Grantor, which shall not be unreasonably withheld.

17. ATTORNEY'S FEES AND VENUE: In any proceeding brought by Grantor to enforce any covenant or condition of this agreement, the prevailing parties to recover from the adverse party, reasonable attorney's fees and all their costs and expenses (including reasonable costs of appeal and of searching the records), incurred incident to that proceeding. The venue of any court proceeding shall be held in Adams County, Washington, and this agreement shall be construed according to the laws of the State of Washington.

18. SUCCESSORS IN INTEREST: This agreement shall inure to the benefit of and be binding upon the heirs, assigns and successors in interest of the parties hereto.

19. ENTIRE AGREEMENT: This agreement constitutes the entire agreement between the parties. No representations, warranties or promises pertaining to this agreement or any premises affected thereby have been made, or shall be binding upon any of the parties hereto except as expressly stated herein. This Agreement may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any such change is sought.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

CARNATION COMPANY

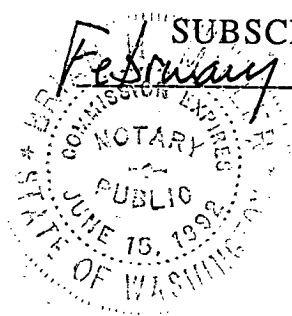
J R Meyer

CITY OF OTHELLO

Jed Muscott

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF ADAMS )

On this day personally appeared before me J.R. Munyon  
to me known to be the \_\_\_\_\_ of the corporation that  
executed the foregoing instrument and acknowledged the said instrument  
to be the free and voluntary act and deed of said corporation, for the uses  
and purposes therein mentioned; and on oath states that they are  
authorized to execute the said instrument.



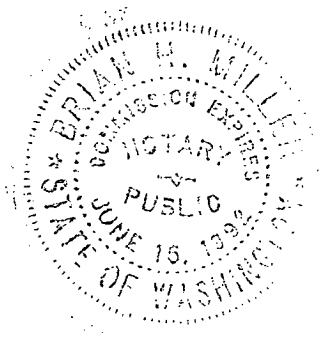
SUBSCRIBED and SWORN TO before me this 2 day of  
February, 1990.

Brian H. Miller  
Notary Public in and for the State of  
Washington, residing at Othello.  
My commission expires: 6-15-92.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF ADAMS )

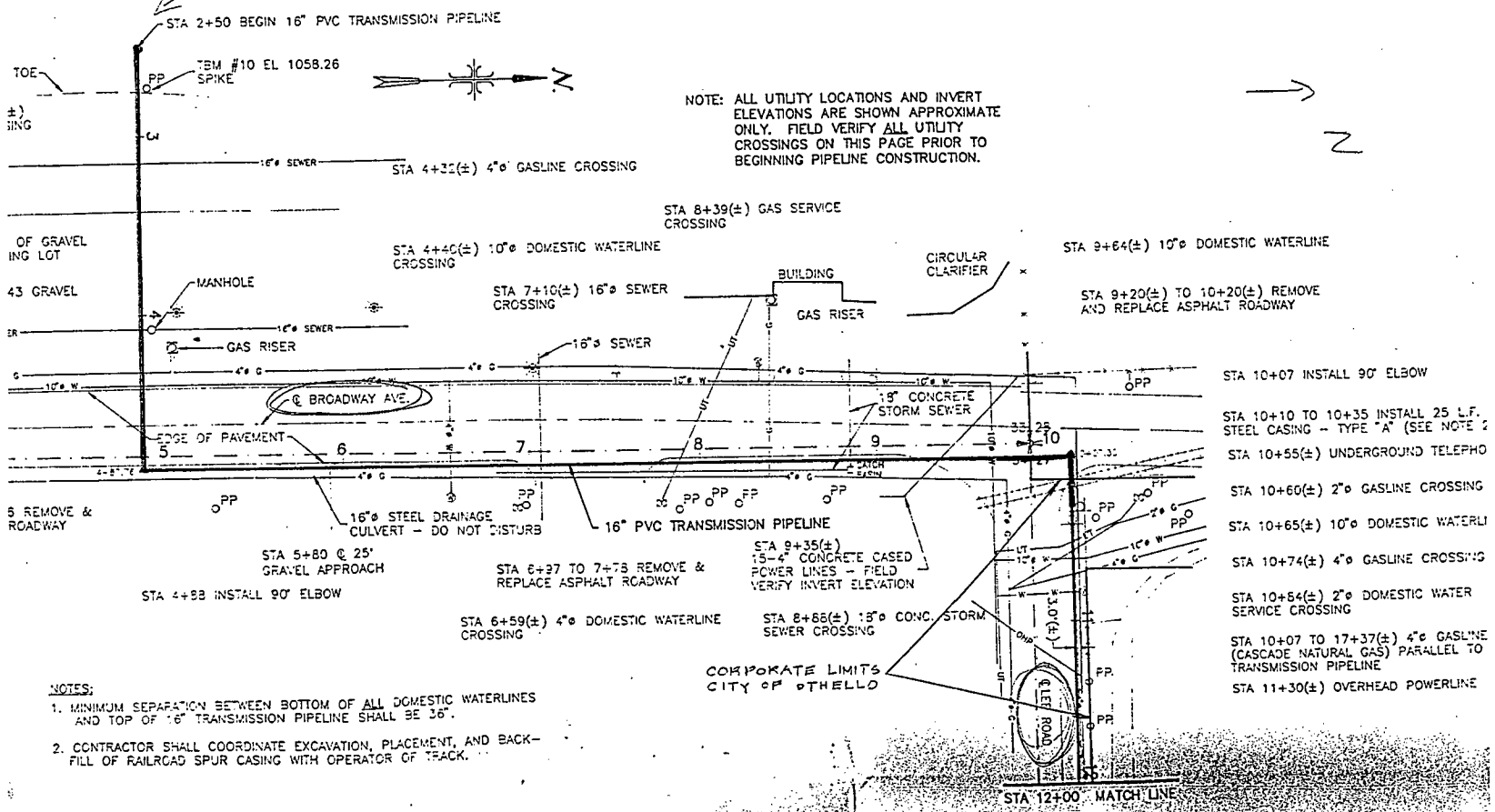
On this day personally appeared before me Ted Muscott  
and \_\_\_\_\_, to me known to be the  
Mayor and \_\_\_\_\_, respectively, of the  
corporation that executed the foregoing instrument and acknowledged the  
said instrument to be the free and voluntary act and deed of said  
corporation, for the uses and purposes therein mentioned, and on oath  
states that they are authorized to execute the said instrument.

SUBSCRIBED and SWORN TO before me this 2nd day of  
February, 1990.



Brian H. Miller  
Notary Public in and for the State of  
Washington, residing at Othello.  
My commission expires: 6-15-92.

CARNATION  
PRETREATMENT SITE



NOTE: ALL UTILITY LOCATIONS AND INVERT ELEVATIONS ARE SHOWN APPROXIMATE ONLY. FIELD VERIFY ALL UTILITY CROSSINGS ON THIS PAGE PRIOR TO BEGINNING PIPELINE CONSTRUCTION.

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Z

- NOTES:
1. MINIMUM SEPARATION BETWEEN BOTTOM OF ALL DOMESTIC WATERLINES AND TOP OF 16" TRANSMISSION PIPELINE SHALL BE 36".
  2. CONTRACTOR SHALL COORDINATE EXCAVATION, PLACEMENT, AND BACK-FILL OF RAILROAD SPUR CASING WITH OPERATOR OF TRACK.

- STA 10+07 INSTALL 90° ELBOW
- STA 10+10 TO 10+35 INSTALL 25 L.F. STEEL CASING - TYPE "A" (SEE NOTE 2)
- STA 10+55(±) UNDERGROUND TELEPHO
- STA 10+60(±) 2" GASLINE CROSSING
- STA 10+65(±) 10" DOMESTIC WATERLI
- STA 10+74(±) 4" GASLINE CROSSING
- STA 10+54(±) 2" DOMESTIC WATER SERVICE CROSSING
- STA 10+07 TO 17+37(±) 4" GASLINE (CASCADE NATURAL GAS) PARALLEL TO TRANSMISSION PIPELINE
- STA 11+30(±) OVERHEAD POWERLINE

EXHIBIT "A"  
VOL 0166 PAGE 396



RECORD AND RETURN TO

City of Othello  
500 E Main St  
Othello, WA 99344

## FIRST AMENDMENT TO EASEMENT FOR POTATO EFFLUENT TRANSMISSION LINE

This agreement (herein "First Amendment") is made this 18<sup>th</sup> day of December, 2014, between the CITY OF OTHELLO (herein the "Grantor") and J.R. SIMPLOT COMPANY, a Nevada corporation, (herein the "Grantee").

## 1. Recitals:

- 1.1 Grantor and Carnation Company, a Delaware corporation, executed an "EASEMENT FOR POTATO EFFLUENT TRANSMISSION LINE" Agreement (herein "Agreement") dated February 2, 1990 and recorded under Adams County Auditor's records Volume 0166, pages 389-396 on March 27, 1990, for Carnation Company to construct, operate and maintain a 16" pipeline within Grantor's street right-of-way along North Broadway Avenue and Lee Road, to transport potato processing plant effluent to Carnation Company's storage and land application site east of Bruce, Washington.
- 1.2 Since the Agreement was executed, two changes have occurred which necessitate the amendment of the Agreement. First, Carnation Company has sold its business to J.R. Simplot Company, a Nevada Corporation, which is now the successor in interest party to Carnation Company under the Agreement. Second, the original Agreement granted an easement for the transmission line up to the city's corporate limits as of February 2, 1990; the city's corporate limits have since expanded and now extend beyond the grant of the easement provided for in the Agreement.
- 1.3 J.R. Simplot Company, as the successor party in interest, and Grantor City of Othello desire to amend the Agreement to provide for the changes identified in paragraph 1.2 above.

## 2. Agreement:

- 2.1 For valuable consideration, receipt of which is hereby acknowledged, Grantor and J.R. Simplot Company agree to amend the Agreement by replacing Exhibit "A" to that Agreement with the attached "Amended Exhibit A". The attached "Amended Exhibit A" incorporates the extension of the easement for the transmission line an additional 3,985 feet (approximately) to the Grantor's current corporate limits.
- 2.2 Grantor grants to J.R. Simplot Company a non-exclusive easement across, along,

Amendment  
CITY OF OTHELLO  
Adams County Auditor, Heidi K. Hunt



in, upon and under that portion of Grantor's property being a strip ten (10') feet in width lying within Grantor's street right-of-way along north Broadway Avenue and Lee Road as outlined in red in the map attached hereto as "Amended Exhibit A", and by this reference made a part hereof for the purpose of installing, constructing, operating, maintaining, removing, repairing, replacing and using a buried PVC pipeline for the purpose of transporting potato effluent generated from J.R. Simplot Company's Othello, Washington plant to be carried to J.R. Simplot Company's storage and land application site located east of Bruce, Washington, together with the non-exclusive right of ingress and egress from the easement area for the foregoing purposes.

Subject to all existing easements, covenants, restrictions and reservations of record or in apparent use.

- 2.4 Grantor hereby reserves unto itself, the right to utilize the easement area for any purposes it deems necessary including, but not necessarily limited to operating and maintaining its roads and road right-of-way.
- 2.5 This First Amendment and easement is further granted subject to and conditioned upon the terms, conditions and covenants which the original grantee, Carnation Company, promised to faithfully and fully observe and perform in the original Agreement dated February 2, 1990, to which J.R. Simplot Company now binds itself as successor party in interest thereof.
- 2.6 Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepared, addressed to:

J.R. Simplot Company  
Attn: Factory Manager

with copy to: J. R. Simplot Company  
Attn: Corporate Secretary  
P. O. Box 27  
Boise, Idaho 83707

\_\_\_\_\_  
Othello WA 99344

And to:

City of Othello  
Attn: The Mayor  
500 E Main  
Othello WA 99344-1195

Or at such other address as either party may designate to the other in writing from time to time. All notices to be given with respect to this agreement shall be in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process

2.7 All other terms, conditions and covenants contained in that Agreement

Amendment  
CITY OF OTHELLO  
Adams County Auditor, Heidi K. Hunt



remain unchanged and in full force and effect.

Dated: 18 DEC 2014


J.R. SIMPLOT COMPANY, a Nevada  
Corporation

By 

Title Senior Vice President,  
Secretary and General Counsel

Dated: 12-8-14

CITY OF OTHELLO

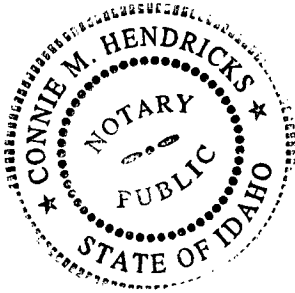
By   
Shawn Logan, Mayor

Amendment  
CITY OF OTHELLO  
Adams County Auditor, Heidi K. Hunt



State of Idaho  
County of Ada

I certify that I know or have satisfactory evidence that David Spurling signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the <sup>Sr. VP Secretary</sup> ~~general counsel~~ of J.R. Simplot Company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated 12/18/2014

[Signature]

Notary Public

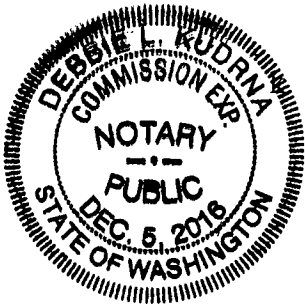
Connie M. Hendricks

[Type or Print Name]

My appointment expires 8/22/2020

State of Washington  
County of Adams

I certify that I know or have satisfactory evidence that Shawn Logan signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Othello to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated 12/8/2014

[Signature]

Notary Public

Debbie L. Kudrna

[Type or Print Name]

My appointment expires 12/5/2016